



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bollinger Machine Shop & Shipyard, Inc.

File: B-245702

Date: September 23, 1991

Marcus B. Slater, Jr., Esq., and William C. Buckhold, Esq., Fort & Schlefer, for the protester. Behn Miller, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where protester files an agency-level protest, subsequent agency receipt of best and final offers (BAFO) constitutes initial adverse agency action, and protest to the General Accounting Office filed more than 10 working days after receipt of BAFOs is untimely.

DECISION

Bollinger Machine Shop & Shipyard, Inc. protests the terms of amendment No. 0009, issued by the Department of the Army under request for proposals (RFP) No. DAAK70-91-R-0007. The protested amendment was issued on July 29, after the Army had already received initial proposals. Bollinger protested the changes made by amendment No. 0009 to the agency on August 9; despite Bollinger's protest, the Army proceeded with receipt of best and final offers (BAFO) on August 12.^{1/} By letter dated August 30, the Army formally denied Bollinger's agency-level protest; on September 17, Bollinger filed the instant protest with our Office.

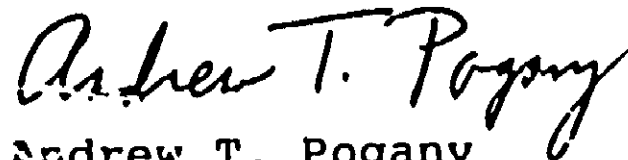
We dismiss the protest as untimely.

Under our Bid Protest Regulations, if an agency-level protest has been filed initially, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive working knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1991). Here, the Army proceeded with receipt of BAFOs without addressing Bollinger's concerns; this constituted initial adverse agency action on the agency-level protest and thus, to be timely, Bollinger

^{1/} After filing its agency-level protest, Bollinger submitted a BAFO on August 12.

should have filed its protest at the latest within 10 working days of this August 12 BAFO closing date. See Ramer Prods. Ltd.-Recon., B-224027.7, Sept. 28, 1987, 87-2 CPD ¶ 304. Accordingly, although Bollinger's protest to this Office was received within 10 working days of the Army's formal August 30 agency-level denial, because this notice did not constitute the initial adverse agency in this case, Bollinger's protest to this Office is untimely.

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel